

111 FERC ¶ 61,135
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeene G. Kelly.

Dominion Transmission, Inc.

Docket No. RP05-51-000

ORDER ON TECHNICAL CONFERENCE

(Issued April 29, 2005)

1. Dominion Transmission, Inc. (DTI) has proposed to clarify and update its tariff provisions relating to capacity allocation, right-of-first refusal (ROFR) provisions, and reservation of capacity. Following a technical conference to discuss this proposal, DTI submitted *pro forma* tariff sheets revising its proposal.¹ The Commission accepts the language in the *pro forma* tariff sheets, subject to the modifications discussed below and the filing of actual tariff sheets. This order benefits the pipeline and its customers by permitting DTI to implement reasonable tariff provisions concerning the allocation of capacity.

I. Background

2. On October 29, 2004, DTI filed tariff sheets to clarify and update all procedures related to the allocation of capacity and miscellaneous tariff changes. DTI proposes to: (1) update its ROFR provisions; (2) clarify and update its procedures for the allocation of unsubscribed firm capacity; (3) add provisions permitting DTI to reserve available capacity for future expansion projects, and; (4) modify or eliminate various existing, out-dated tariff provisions that conflict with the new proposals. DTI requested an effective date of December 1, 2004 for its proposed tariff sheets. A number of parties protested or filed adverse comments to DTI's filing.

¹ See Appendix B.

3. On November 30, 2004, the Commission issued an order accepting DTI's proposed tariff sheets subject to refund and the outcome of a technical conference.² The order suspended the effectiveness of the tariff sheets until the earlier of May 1, 2005 or a date to be specified in an order issued after the technical conference. The Commission also directed staff to convene a technical conference to gather additional information and to provide parties with a forum to discuss relevant issues and concerns raised by the filing.

4. On February 1, 2005, staff conducted the technical conference in this proceeding. DTI clarified certain issues and agreed to modify its proposed tariff sheets to reflect concerns raised at the conference and in the various protests and comments. Accordingly, on February 9, 2005, as supplemented on February 10, 2005, DTI filed *pro forma* tariff sheets to reflect the modifications it agreed to at the technical conference. The parties then filed initial comments by February 23, 2005, and reply comments by March 7, 2005. The parties filing initial and reply comments are listed in Appendix A.

5. On January 7, 2005, before the technical conference, Bay State Gas Company filed a motion to intervene out-of-time. No party opposed that motion. The Commission finds that no party would be prejudiced by granting the motion to intervene out-of-time, nor would it disrupt the proceeding. Accordingly, the Commission grants the motion to intervene out-of-time.

II. Discussion

6. The Commission accepts DTI's *pro forma* tariff sheets, subject to conditions. Below the Commission addresses several provisions of DTI's *pro forma* proposal, and, as necessary, modifies certain aspects of DTI's proposal.

A. Right of First Refusal (ROFR) Provisions

1. Section 24.2.B - Timing of ROFR Notification

Proposal

7. DTI's form of service agreements for its firm services generally provide that service will continue until either DTI or the shipper give notice of termination. Notice to terminate firm transportation service must be given at least 12 months before the start of the contract year. The corresponding notice period for firm storage service is 25 months.

² *Dominion Transmission, Inc.*, 109 FERC ¶ 61,244 (2004) (November 30, 2004 Order).

8. Section 24.2.B of DTI's proposal provides that an existing shipper must notify DTI in writing of its intent to retain its option to exercise its ROFR within one month from the date either party gives notice of termination relating to all or a portion of the quantities under the service agreement. For any Service Agreement that terminates by its own terms, with no prior notification required by either party, DTI proposes that the Customer shall be presumed to have given timely notice of its intent to exercise its ROFR for the entire amount of its capacity, unless the Customer has informed DTI otherwise in writing.

Comments

9. NiSource contends that DTI's proposal would effectively require the notice of intent to retain the option to exercise the ROFR eleven months before the service agreement was to expire. NiSource asserts that proposed section 24.2.B should be revised to require the initial notice of intent be made no earlier than six months prior to the expiration of the service agreement. NiSource contends that this is a more reasonable approach given that a detailed examination of current market conditions requires six months rather than the one month proposed by DTI.

Reply Comments

10. DTI asserts that section 24.2.B provides that an existing shipper is not required to notify DTI of its intent any earlier than one month after the applicable deadline for giving notice of termination under the terms of the service agreement. DTI contends that for transportation service agreements, the deadline would be eleven months prior to contract termination, for storage agreements the deadline would be two years prior to contract termination.

11. DTI points out that, while the initial ROFR notice requirement requires the existing shipper to state whether it desires to continue to receive all or a portion of its service entitlement, it does not constitute a final decision regarding the retention of its capacity. DTI further contends its ROFR provisions fall within the Commission's policy that the initial notice should be given within a reasonable period before the contract ends, "normally six months to a year."³

³ DTI Reply Comments at 6, citing, *Transcontinental Gas Pipe Line Corp.* 103 FERC ¶ 61,295 (2003) (*Transco*) and *Texas Eastern Transmission, LP*, 101 FERC ¶ 61,215 at P 7 (2002), *order on reh'g*, 103 FERC ¶ 61,135 at P 5 (2003).

Commission Ruling

12. In *Transco*, the Commission stated that “[u]nder the ROFR, a reasonable period before a contract ends, normally six months to a year, a shipper would provide notice to the pipeline stating whether or not it was interested in renewing its contract.”⁴ The Commission finds that DTI’s proposal is within this reasonable timeframe established by prior Commission orders for initial notice requirements. This finding is also consistent with the cases cited by DTI, and NiSource’s acknowledgement that DTI’s proposal “falls within the outer limits of the six-to-twelve month ‘intent’ window that the Commission has suggested for such notices.”⁵ Because section 24.2.B does not require the existing shipper to make a final decision whether to retain its capacity, the Commission sees no need to give the existing customer additional time to assess market conditions before it must give the section 24.2.B notice. If the existing shipper is uncertain whether it wants to retain its capacity, then it may give notice that it desires to retain the option to exercise the ROFR. If subsequent market conditions are such that it does not desire to retain capacity, it can then choose not to match whatever third party bid may be presented to it. The Commission concludes that the parties have not advanced any compelling reason for the Commission to adjust this timeframe in this instance. Accordingly, DTI’s proposal on this issue is accepted.

2. Section 24.2.F.1 - Posting and Bidding on ROFR Capacity

Proposal

13. Proposed section 24.2.F addresses ROFR capacity, the posting of such capacity for third party bids, and provides for the bidding and bid evaluation procedures for capacity when the existing shipper exercises its ROFR. Specifically, section 24.2.F.1 provides that DTI will post such capacity for bidding not earlier than one year prior to the expiration of the service agreement and that the bidding period shall be completed no later than 60 days prior to the expiration of the service agreement.

⁴ *Transco* at P 20.

⁵ Nisource Comments at 3, citing, *Algonquin Gas Transmission Co. and Texas Eastern Transmission Corp.*, 94 FERC ¶ 61,383 at 62,445 (2001).

Comments

14. New Jersey Natural,⁶ NiSource, and Richmond filed comments requesting that DTI not post the ROFR capacity for third party bids any earlier than six months prior to the expiration of the service agreement. NiSource contends that DTI's proposed bidding process would allow DTI to start the bidding process immediately after it receives a shipper's notice of intent to exercise its ROFR. NiSource asserts that proposed section 24.2.F.1 raises the possibility that the process could be completed and the existing shipper could be required to execute a new service agreement as early as ten months before the existing agreement expires. NiSource argues that this would not allow an existing shipper to properly assess current market conditions and, therefore, DTI's proposed tariff should be modified to provide that an existing shipper exercising a ROFR will not be required to execute a new service agreement prior to 60 days before the expiration of the existing agreements.

15. Richmond argues that section 24.2.F.1 should be modified to state that DTI will not post ROFR capacity for third party bids any earlier than six months prior to the expiration of the existing shipper's service agreement, rather than one year as proposed by DTI. Richmond argues that DTI's existing shippers should be given the opportunity to make a decision on whether to retain firm, long-term capacity through the exercise of its ROFR as close to the contract termination date as reasonably possible.

Reply Comments

16. DTI contends that its ROFR process and the proposed timeline is consistent with Commission policy in that the Commission has previously held that a "12-month lead-time for the commencement of the ROFR period is within the range of times permitted by Commission policy."⁷ DTI argues that in *Midcoast*, the Commission rejected arguments that other cases stand for a maximum six-month ROFR lead time and held that allowing

⁶ In its Reply Comments, New Jersey Natural states that it has determined that the ROFR bidding timing as proposed by DTI is acceptable and, therefore, it withdraws its comment seeking a further modification of this portion of the proposed tariff changes. Reply Comments of New Jersey Natural at 1.

⁷ DTI Reply Comments at 8, *citing, Midcoast Interstate Transmission, Inc.*, 81 FERC ¶ 61,035 at 61,185 (1997) (*Midcoast*) ((*citing, Iroquois Gas Transmission System, L.P.*, 63 FERC ¶ 61,285 at 62,914 (1990); *Great Lakes Gas Transmission Limited Partnership*, 64 FERC ¶ 61,017 at 61,182 (1993); *Colorado Interstate Gas Co.*, 72 FERC ¶ 61,165 (1995); and *Tuscarora Gas Transmission Co.*, 71 FERC ¶ 61,011 (1995)) (*Midcoast*).

Midcoast a “12-month ROFR requirement is in accord with Commission policy.”⁸ Accordingly, DTI contends that its ROFR timeframe, under which the third party bidding period may commence twelve months prior to the contract expiration, is consistent with Commission policy.

Commission Ruling

17. The Commission finds that DTI’s proposal is consistent with the timeframes permitted by the Commission in other proceedings and that the parties suggesting a modification of this timeframe have not shown that it is necessary for the Commission to require DTI to adopt a shorter timeframe. There are various competing interests to consider in determining how soon before contract termination the ROFR process must be completed. While the existing shipper may want to postpone any final decision on retaining its capacity to a time as close to contract termination as possible, a third party bidders may have an interest in knowing whether it has obtained the capacity well before the existing shipper’s contract terminates. A winning third party bidder may need time to finalize any business arrangements that are premised on obtaining the capacity before it commences service. A losing third party bidder may need time to make other arrangements for obtaining gas or alternative fuel deliveries. Therefore, DTI’s proposal to retain the flexibility to start the bidding process as much as a year before contract termination is reasonable. Accordingly, the Commission accepts DTI’s proposed tariff language on this issue.

3. Section 24.2.F.4 - Winning Bidder – Volumetric Portion of Capacity

Proposal

18. Proposed section 24.2.F.4 provides that DTI will notify the existing shipper and the winning third party bidder of the best bid within five business days after the close of the bid period. Further, if the existing shipper modifies the service agreement in any way, DTI may use the evaluation procedure in its tariff to determine whether its bid matches the best third party bid. If a third party bidder submits a bid for only a volumetric portion of the capacity, the existing shipper must match that bid.

Comments

19. Con Edison and New Jersey Natural sought clarification of the ROFR matching obligations in section 24.2.F.4 for an existing shipper that seeks to retain a volumetric

⁸ DTI Reply Comments at 8, *citing*, *Midcoast* at 61,186.

portion of the capacity level of the best bid. New Jersey Natural proposes the following addition to the third sentence of section 24.2.F.4:

If Customer modifies that service agreement in any way, Pipeline shall use the evaluation criteria in its posted notice pursuant to GT&C section 43.2 and consistent with section 43.4, as applied to the quantity of service that Customer elects to retain to determine whether the Customer's bid matches the best third party bid(s); *provided, that in the event Customer elects to match only a volumetric portion of the best bid, Customer shall only be obligated to match that proportionate amount of the best bid* (emphasis added).

Reply Comments

20. In their Reply Comments, Dominion LDCs agree with New Jersey Natural that section 24.2.F.4 should clarify that the existing shipper need only match the net present value (NPV) of the equivalent portion of the best bid and not match the NPV of the entire bid. Dominion LDCs point out that New Jersey Natural's position is supported by several Commission decisions.⁹ Dominion LDCs also request an additional change discussed below.

21. In its Reply Comments DTI states that it believes that the language in section 24.2.F.4 is sufficiently clear but that if the Commission concludes that further clarification of section 24.2.F.4 suggested by New Jersey Natural would be helpful, DTI is willing to adopt the proposed language.

Commission Ruling

22. The Commission finds that the suggested language by New Jersey Natural is preferable to the language proposed by DTI. Although DTI's proposed tariff language is generally clear, the modification proposed by New Jersey Natural adds specificity to the proposed language. Given DTI's statement that it is willing to accept the proposed language, the Commission directs DTI to modify its proposal to encompass New Jersey Natural's proposed modification.

23. However, even with DTI's agreement to New Jersey's Natural's proposed modification to section 22.4.F.4, nonetheless, the Dominion LDCs assert that DTI

⁹ Dominion LDCs Reply Comments at 2, *citing*, *Williams Natural Gas Company and Missouri Gas Energy*, 81 FERC 61,350 at 61,627 n. 21 (1997), *citing Transwestern Pipeline Co.*, 61 FERC ¶ 61,332 at 62,271 (1992).

misapprehends the effect of the bidding process.¹⁰ The Dominion LDCs request that the Commission clarify that DTI's obligation in the ROFR process is to determine a single best third party bid as opposed to "best bids(s)" for the existing shipper to match and to clarify that once the existing shipper matches that single best third party bid, it is entitled to keep not only the amount of capacity covered by the best bid, but upon the existing shipper's agreement to pay the maximum rate, it may retain any capacity not covered by the single best bid for whatever period the existing shipper states.¹¹

24. DTI responds stating that the Dominion LDC's suggestion is inconsistent with Commission policy and does not make economic sense. DTI argues that the purpose of the ROFR is for a long-term customer to be able to retain its capacity provided that it is willing to match the best competing bid for the capacity.¹² DTI argues that under the Dominion LDCs' approach, DTI could be required to award capacity to the ROFR customer despite an obviously better bid for the same capacity, at the cost of allocative efficiency, the interests of the competing bidder, and DTI's economic well-being.

25. The Commission declines to adopt the Dominion LDCs' request that the Commission clarify that DTI may only present a single third party bid for the existing shipper to match, even when none of the third party bids are for the full amount of the existing shipper's capacity. If a combination of several third party bids for a portion of the existing shipper's capacity provide the highest value to DTI under its bid evaluation methodology, DTI may accept all of those third party bids and present them to the existing shipper to match. This is consistent with the Commission's policy that the shipper placing the highest value on the capacity should obtain it.¹³ Therefore, the Commission will not grant the clarification requested by Dominion LDCs. Accordingly,

¹⁰ For example, Dominion LDCs states that DTI believes that if a shipper with a contract of 20,000 dths went through the ROFR bid process, and competing bids at maximum rates were received in the amounts and terms of 3,000 dths for 5 years, 5,000 dths for 3 years, and 12,000 dths for 2 years, then the ROFR shipper would not be presented a single best bid to match but rather would have to match each of these bids in order to retain all of its 20,000 dth capacity. Dominion LDCs Initial Comments at 5-6.

¹¹ Dominion LDCs assert that if its modification were accepted changes would also be required to "best bid(s)" references in sections 24.2.F.3 and 24.2.F.5. Dominion LDCs Initial Comments at 6.

¹² DTI Reply Comments at 10, citing, *Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, III FERC Stats. & Regs. [Regs Preambles] ¶ 61,091 at 31,336 (Order No. 637).

¹³ See, e.g., *Northern Natural Gas Co.*, 108 FERC ¶ 61,044 (2004).

we find the proposal reasonable and accept it, subject to DTI reflecting the agreed to revisions to adopt New Jersey Natural's suggested language.

4. Sections 24.2.F.5 and 43.4.H - Bidding Procedure

Proposal

26. Section 24.2.F.5 provides that:

[i]f a customer elects not to match the best bid(s) for all or for any volumetric portion of its capacity, then such election shall constitute an irrevocable waiver of Customer's ROFR with respect to the capacity covered by the bid(s) not matched (except as provided in Section 43.H) and the Pipeline shall deliver a service agreement to the winning bidder(s) for execution pursuant to the terms of GT&C Section 43.

27. Section 43.4.H provides the timeline that a successful bidder must follow. Pursuant to section 43.4.H, DTI proposes to confirm the terms of the accepted bid within five business days of the close of the bidding period, with the successful bidder returning the executed service agreement within 15 days. However, DTI proposes that it may extend the deadline for receipt of the service agreement when warranted as determined by DTI on a not unduly discriminatory basis. In addition, DTI proposes that if the winning third party bidder fails to execute a service agreement then:

Pipeline shall have the option, subject to a renewed opportunity for exercise of any applicable ROFR pursuant to the procedures of GT&C section 24.2.F.4, (1) to offer the capacity to the next highest bidder or bidders, if any, or (2) post the capacity for bid again.

Comments

28. In its Initial Comments, DTI states that concerns were raised at the technical conference that the effect of section 24.2.F.5 coupled with section 43.4.H would be to terminate the existing shippers' rights should the existing shipper elect not to match the best third party bid for the capacity, including in a situation where the winning third party bidder ultimately failed to execute a service agreement. DTI stated that originally, if the winning third party bidder did not execute a service agreement, DTI could either offer the capacity to the next highest bidder or repost the capacity for third party bids. DTI explains that it revised both sections 24.2.F.5 and 43.4.H to clarify that this action would now be subject to a renewed opportunity for the existing shipper to exercise any applicable ROFR.

29. DTI states that it also clarified that if the “next highest bidder” under its proposed language had bid the same terms as the winning third party bidder that failed to execute a service agreement, the existing shipper will not be given another opportunity to match the same terms because its ROFR will have already been applied and the relevant bid would not have been matched. However, DTI states that if it offers the capacity to the next highest third party bidder that offered different terms than the reneging winner, then the existing shipper will have an opportunity to match that lesser offer.

Reply Comments

30. Dominion LDCs assert that DTI provided a clarification in its Initial Comments to address the situation where a successful third party bidder does not ultimately execute a service agreement, and the existing shipper’s ROFR is renewed under certain factual situations. Dominion LDCs assert, however, that DTI’s proposed tariff language does not adequately reflect DTI’s clarification. Dominion LDCs assert that DTI’s tariff language should be modified to match its clarification.

Commission Ruling

31. The Commission finds the language proposed by DTI in both sections 24.2.F.5 and 43.4.H to be adequate to clarify that if the winning third party bidder fails to ultimately execute a contract for the capacity, existing shippers generally would have “a renewed opportunity for exercise of any applicable ROFR.” Accordingly, the Commission accepts the proposed language.

5. Section 24.2.F.6 - No Acceptable Bid Procedure Proposal

32. Section 24.2.F.6 sets forth the process to be followed when there are no acceptable third party bids for the ROFR capacity. In such case, DTI proposes to notify the existing shipper that there are no acceptable third party bids within five business days after the close of the bid period. The existing shipper would then have 10 business days to exercise its ROFR for all or part of its capacity under the current rate schedule and pay the maximum rate. Within five business days after receipt of notice from the existing shipper, DTI will deliver an executable copy of a service agreement. The shipper then has 15 business days from receipt of the service agreement to execute the agreement and return it to DTI. This provision further provides that if the existing shipper does not agree to pay the effective maximum rate and DTI and the existing shipper do not mutually agree upon a rate and term of service, DTI shall follow the procedures of section 43.6 (allocation of unsubscribed firm capacity) with regard to any capacity not contracted through the ROFR process.

Comments

33. NiSource and Dominion LDCs contend that DTI's proposed ten day period for an existing shipper to notify DTI that it will exercise its ROFR in a no third party bid situation is an unreasonably short period of time. NiSource argues that the Commission recently found that a twenty business-day period for such notices is just and reasonable,¹⁴ and argues that DTI should afford its shippers a similar time period. Dominion LDCs assert that DTI should allow for at least 15 business days because this period is consistent with DTI's proposed 15 Business Day period provided in section 24.2.F.4 for a customer to notify DTI of its intent to match the best bid and retain capacity to which the bid applies and that other pipelines have provided a period of at least 20 business days.¹⁵

34. Dominion LDCs asserts that since DTI has provided in section 24.2.F.4 for the discretionary extension of the 15 Business Day period for a ROFR shipper to notify DTI of its intent to match the best bid and retain capacity to which the bid applies, the Commission should direct DTI to insert the same provision for an extension in proposed section 24.2.F.6 applicable to no-acceptable-bid situations.¹⁶

Reply Comments

35. DTI contends that its proposed tariff provides a total of 25 business days to take the required action, (10 days to give notice that it will exercise its ROFR and 15 days to execute a new contract), which exceeds the 20 Business Day period requested by the commenters to this proceeding. DTI further contends that the NiSource and Dominion LDCs' reliance on *Columbia Gas* and *Northern Border* is misplaced because those cases do not require a specific number of days for all pipelines and the procedures for the pipelines are fundamentally different than those for DTI. Further, since Commission policy as stated in *Columbia Gas*,¹⁷ requires that pipelines establish reasonable minimum periods for the ROFR process, DTI contends that its proposal is in accord with Commission policy.

¹⁴ Initial Comments of Nisource at 4, *citing, Columbia Gas Transmission Corp.*, 107 FERC ¶ 61,078 (2004) (*Columbia Gas*).

¹⁵ Initial Comments of Dominion LDCs at 7, *citing, Pan-Alberta (U.S.) Inc. and Mirant Americas Energy Marketing, L.P. v. Northern Border Pipeline Company*, 101 FERC ¶ 61,249, *order on compliance*, 102 FERC ¶ 61,158 at P 3 (2003) (*Northern Border*).

¹⁶ Dominion LDCs Initial Comments at 8.

¹⁷ DTI Reply Comments at 12, *citing, Columbia Gas* at P 7.

36. In response to NiSource and Dominion LDCs' concerns that DTI provides the ROFR customer a 15 Business Day time frame in cases where the pipeline did receive acceptable bids on ROFR capacity, DTI argues that the proposed timeline in section 24.2.F.6 for the customer to execute a service agreement is the same 15 days as allowed in section 24.2.F.4. DTI contends that its proposed timeframe of 10 business days for notification coupled with 15 business days to execute a service agreement is reasonable and is consistent with other pipelines' tariffs.

37. Dominion LDCs argue in their reply comments that while they support the proposed revisions to sections 24.2.F.4 and 43.4, DTI has not maintained consistency throughout its revised tariff because it has not provided the same notice period nor the option to extend the notice period for situations where no bids were received. Dominion LDCs contend that DTI should also provide at least 15 business days from the date when DTI notifies the existing shipper that no bids were received in order to notify DTI of its intent to retain some or all of its capacity. Dominion LDCs further contend that DTI should also be willing to extend that period for up to five business days, on a not unduly discriminatory basis. Dominion LDCs propose that such changes be made to both section 24.2.F.5 and 43.4.H.

Commission Ruling

38. DTI is correct, in that the Commission has not imposed an inflexible standard with a set number of days that a pipeline must provide to existing shippers for the exercise of their ROFR rights. This policy, which requires that pipelines provide a reasonable amount of time for shippers to respond, permits pipelines a reasonable amount of flexibility to establish a workable procedure on their individual systems. The Commission finds that DTI's proposal to offer 10 business days to determine whether and how to exercise its ROFR, in the no third party bid situation, provides existing shippers a reasonable time to make a decision. The existing shipper should have considered its need to retain the capacity and the rate it is willing to pay even before it receives notice that there is no acceptable third party bid. Moreover, if the existing shipper decides not to exercise its ROFR, the pipeline will then have to market the capacity to others. The pipeline may reasonably establish deadlines that permit it time to accomplish such acts before the existing shipper's contract terminates.

6. Section 24.2.G - Waiver of ROFR Rights

39. DTI proposes in section 24.2.G, that the customer's failure to abide in a timely manner to the applicable notice requirements of section 24.2.B, or to the applicable deadlines for service agreement execution set forth in sections 24.2.F.4 and F.6, shall constitute an irrevocable waiver of the customer's ROFR.

Initial Comments

40. Several parties, including Dominion LDCs, PGC, NiSource, New Jersey Natural and Richmond request notification from DTI before their ROFR expires or otherwise argue that DTI's proposal that a shipper would lose its ROFR rights if notice was not given, to be too harsh, given the importance of the ROFR to the shippers.

41. PGC requests that the Commission require DTI to create a presumption that a shipper intends to retain its right to exercise its ROFR, and to provide a mechanism to allow shippers who do not want to retain this right to notify the pipeline in a timely fashion. Alternatively, PGC urges the Commission to require DTI to notify a shipper in writing prior to the notification deadline. Dominion LDCs contend that DTI's proposed procedure does not provide adequate notification of the possible loss of the ROFR and that it is reasonable to ask pipelines to assume extra burdens to preclude inadvertent waiver of ROFR rights by providing additional notice. New Jersey Natural argues that DTI should permit shippers to satisfy the notification requirement with a standing notice of the shipper's intent to retain its ROFR in the event of the pipeline's notification of termination, or alternatively, that there should be a rebuttable presumption of ROFR right retention in all cases. Richmond and PGC argue that DTI's tariff should assume that an existing shipper intends to exercise its ROFR unless the pipeline is informed to the contrary. NiSource states that given the relatively short deadlines proposed by DTI, proposed section 24.2.G should be stricken or in the alternative, modified to provide protections against the inadvertent waiver of a ROFR.

Reply Comments

42. DTI contends that none of these commenters provide an example of another pipeline that has been required to, or agreed to, assume the burden of ensuring that its existing shippers do not inadvertently waive their ROFR rights. DTI argues that Commission precedent supports DTI's position because the Commission has held that a shipper must initiate the ROFR process,¹⁸ and the shipper must provide notice to the

¹⁸ DTI Reply Comments at 4, *citing*, *Transco*.

pipeline regarding whether it wishes to renew the contract, *i.e.*, exercise its ROFR.¹⁹ DTI contends that its existing shippers must bear a reasonable level of responsibility for administering their own contracts and protecting their own rights.

43. Dominion LDCs assert that they agree with the comments of NiSource that section 24.2.G may also need to be modified, consistent with the Commission's decision on the proposed notice provisions contained in proposed section 24.2.B, to preclude inadvertent forfeiture of the ROFR.

Commission Ruling

44. The Commission will not require DTI to further modify this proposal and will accept the proposal as reasonable. As pointed out by DTI, no party has shown that other pipelines have agreed to notify their existing shippers or that the Commission has required other pipelines to provide notification with regard to ROFR rights. The Commission recognizes, and the parties have emphasized, that ROFR rights are valuable to shippers. As such, the Commission expects that the shippers on DTI's system will vigilantly guard their ROFR and sees no need to burden the pipeline with an obligation to further remind its shippers of their rights. Moreover, the existing shipper need only give the section 24.2.B notice that it desires to retain the option of exercising the ROFR with one month of giving or receiving notice of the termination of the contract. That notice of termination should remind the existing shipper of the need to preserve any existing ROFR rights. Similarly, pursuant to section 24.2.F.4 and 24.2.F.6 a pipeline's notice of a the a winning third party's bid or notice that there is no acceptable third party bid, should remind the existing shipper of the need to make a timely response to safeguard its ROFR rights.

45. This is consistent with the Commission's findings in *Transco*, where parties argued that the ROFR provisions proposed therein placed an onus on a shipper to affirmatively retain its ROFR rights by providing notice that the shipper may desire to continue to receive service.²⁰ The Commission found that it was consistent with Commission policy for Transco to require a shipper to indicate whether it may want to retain its capacity. In the instant case, the Commission finds that the parties have not presented any compelling reason to institute a presumption of ROFR right retention. The shippers have the right and obligation to initiate the ROFR process and the pipeline has a right to rely upon the shipper's notification of intent. Accordingly, we find the proposal reasonable and accept it.

¹⁹ *Id.* at 4, citing, *Algonquin Gas Transmission Co. and Texas Eastern Transmission, LP*, 95 FERC ¶ 61,303 (2001)(*Algonquin*).

²⁰ *Transco* at P 32.

7. Sections 24.2.H, 24.2.H.1, 24.2.H.2, and 24.2.H.3 - Limitations on ROFR

Proposal

46. In section 24.2.H, DTI proposes to set forth the limitations on an existing shipper's ROFR, clarifying at: (1) 24.2.H.1 that the ROFR does not encompass any expansion of service rights; (2) 24.2.H.2 that DTI is not obligated to accept any bid for capacity subject to the ROFR for less than the maximum rate, and (3) 24.2.H.3 that DTI and an existing shipper may agree to extend the term of Part 284 service agreements of 12 months or more outside of the ROFR process.

Comments

47. Dominion LDCs contends that if the Commission accepts DTI's proposed revisions to section 24.2.H, the Commission should include the statement that by doing so, it is not approving any limitations on the existing shipper's ROFR rights by implication or by incorporation by reference.

48. Con Edison states that it has no objection to section 24.2.H.2, as written. However, it states that at the technical conference DTI explained that when there are no acceptable bids for the existing shipper's capacity, the existing shipper may retain the capacity only if it bids the maximum rate, even if DTI had posted the ROFR capacity with a reserve rate. Con Edison argues that if DTI establishes a reserve rate, thereby signaling its willingness to accept less than the maximum rate from a third party bidder, there is no reason that DTI should not be required to accept the reserve rate from the existing customer even if no third party bidder has bid the reserve rate. Therefore, Con Edison requests that the Commission require DTI, in cases where DTI sets a reserve rate for bidding but obtained no acceptable third party bid, to allow the existing shipper to exercise its ROFR at the reserve rate rather than at the maximum rate.

49. Statoil and PSCNY support DTI's proposal to amend section 24.2.H.3 to allow the non-discriminatory negotiation of contract extension, contending that it comports with Commission policy. Statoil asserts that in *Transco*,²¹ the Commission determined that the negotiation of contract extensions is permissible provided that it is not done in an unduly discriminatory manner.

²¹ Statoil Initial Comments at 4, *citing*, *Transcontinental Gas Pipeline Corp*, 107 FERC ¶ 61,092 at P 19 (2004) (*Transco*).

Reply Comments

50. In response to the Dominion LDC's concerns, DTI asserts that to avoid any shipper confusion, it included section 24.2.H in its tariff to reinforce the parameters of the regulatory ROFR. DTI asserts that this section complements its affirmative statement of the ROFR rights as set forth in section 24.2.A of its tariff. In regard to Con Edison's suggestion, DTI states that Con Edison has not cited any cases in which the Commission has extended the application of a reserve rate established in the request to third party bids to expand the existing shippers' ROFR rights at the expense of a pipeline's rights and that such an expansion is unwarranted.

Commission Ruling

51. The Commission rejects Con Edison's request that existing shippers be permitted to continue service at the reserve price established in the request for third party bids, where there were no acceptable third party bids. Dominion may reasonably choose not to offer the reserve price to the existing shipper in the no acceptable third party bid situation.

52. When Dominion posts capacity for third party bids with a reserve price lower than the maximum rate, the third party bidders are disciplined in choosing what bid to make by the fact other third party bidders may also bid. Thus, if the third party truly desires to obtain the capacity, it must bid the actual value of the capacity to it, despite the existence of the reserve price. That is because there is no guarantee that it can obtain the capacity at the reserve price. If the third party bidding results in a winning third party bid, that winning bid establishes the value of the capacity which the existing shipper must match in order to retain the capacity. In that situation, the pipeline must use the same bid evaluation method in determining whether the existing shipper has matched the winning third party bid, as it used in choosing the winning third party bid, including the use of any reserve price established for the third party bids. However, the need to match a winning third party bid disciplines the existing shipper in the offer it must make to the pipeline in order to retain its capacity, since it must offer a combination of rate and term that matches the net present value of the third party bid (subject to the right to match only a volumetric portion of the third party bid).

53. A different situation is presented when there were no acceptable third party bids for the existing shipper to match. In the no-acceptable third party bid situation, the existing shipper has the right to enter into a new contract for any term that it chooses, if it is willing to pay the maximum rate. Con Edison's proposal would permit the existing shipper to enter into a new contract at the lower discounted reserve price for any term it chooses, without the discipline of having to match the net present value of any third party bid. In these circumstances, the Commission finds it reasonable for the pipeline to

limit the use of the reserve price to the evaluation of third party bids and whether the existing shipper has matched a winning third party bid.

54. Accordingly, the Commission finds the proposal to be reasonable and accepts the proposed language contained in section 24.2.H.²²

B. Allocation of Unsubscribed Firm Capacity

1. Section 43.1 - Posting of Capacity

Proposal

55. Section 43.1 requires DTI to post notice of capacity on its Electronic Bulletin Board (EBB) within a specified time frame, no more than 12 months and no less than 30 days prior to the date that the capacity will become available and sets forth the information to be included in the posting. Section 43.1 further provides that in the cases where the tie-breaking method is first in time pursuant to section 43.4.F.2, DTI shall provide on its EBB no less than one Business Day advance notice of the upcoming capacity posting.

Comments

56. Richmond contends that at the earliest reasonable time after DTI knows that firm capacity will be available on its system, DTI should be required to post this information on its EBB. Richmond asserts that in *Mississippi River Transmission*, the Commission held that the pipeline must post the availability of such capacity within five days of receiving or sending out a termination notice.²³ DTI argues that posting a notice on its EBB whenever it has received or issued a notice of termination of a service agreement or whenever it knows capacity will become available would be speculative at best and would provide very little practical benefit to any customer. DTI contends that in *Natural*,²⁴ the Commission stated that there is no need to post and notice capacity that might become available if shippers do not exercise unilateral rollover or ROFR rights and that shippers can access *Natural's* Index of Customers to obtain the relevant information.

²² For similar reasons the Commission will reject Con Edison's proposed modification of section 43.4.C(5) of DTI's proposed tariff revision and accept the language as proposed by DTI.

²³ Richmond Initial Comments at 5, citing, *Mississippi River Transmission Corp.*, 89 FERC ¶ 61,067 (1999) (*Mississippi River Transmission*).

²⁴ DTI Initial Comments at 7, citing, *Natural Gas Pipeline Co. of America*, 82 FERC ¶ 61,036 at p. 61,142 (1998) (*Natural*).

57. DTI asserts that its Index of Customers lists customer contracts and the term of the contracts, providing much of the same general information being sought by customers. DTI further contends that once capacity is posted for bid, parties have an ample and equal opportunity to submit bids.

Reply Comments

58. DTI argues in its reply comments that *Mississippi River Transmission* is not on point, that the Commission “directed MRT to make clear when the posting of capacity will be made,”²⁵ and that in response MRT voluntarily proposed to post capacity within five days of the firm capacity being made available.²⁶ DTI further contends that *Mississippi River Transmission* does not support Richmond’s request for early advance notice of potential capacity. DTI asserts that, similar to other pipelines, DTI proposes in section 43.1 a reasonable time-range within which to post available capacity and that Richmond’s request is unsupported and goes beyond what the Commission has required of any other pipeline.

59. In its reply comments, Richmond asserts that on rehearing of the *Natural* order cited by DTI, the Commission granted the following clarification of its earlier *Natural* decision in a manner consistent with Richmond’s requested modification of proposed section 43.1:

First, Indicated Shippers seek clarification of the ruling that there is no need for *Natural* to post capacity that might become available if shippers do not exercise unilateral rollover or ROFR rights. Indicated Shippers state that the ruling does not distinguish between capacity still subject to unilateral rollover or ROFR rights and capacity no longer subject to such rights due to shipper’s decision to allow those rights to lapse. *Indicated Shippers request that the Commission clarify that Natural will be required to post any capacity that is no longer subject to unilateral rollover or ROFR rights as soon as it knows such rights have expired. The Commission grants the requested clarification.*²⁷

²⁵ DTI Reply Comments at 15, *citing, Mississippi River Transmission*, 86 FERC ¶ 61,291 at 62,041 (1999).

²⁶ DTI Reply Comments at 15, *citing, Mississippi River Transmission*, 89 FERC ¶ 61,067 at 61,217 (1999).

²⁷ Richmond Reply Comments at 2, *citing, Natural* at 62,186 (emphasis added).

Commission Ruling

60. Section 284.13(d) of the Commission's regulations requires an interstate pipeline to provide all shippers with "equal and timely access" to information concerning the availability of capacity. The requirement to provide timely access to such information encompasses the obligation to post the future availability of capacity once it becomes known to the pipeline that capacity will become available due to the expiration of rollover or ROFR rights. Therefore, the Commission finds that DTI must post such capacity within a reasonable time after it learns of its availability. The Commission directs DTI to revise its proposal to provide a specific reasonable time when it will provide notice of availability of such capacity after it learns of its availability. As so modified, we find DTI's proposal to be reasonable and accept it.

2. Sections 43.3 and 43.4 - Bidding for Unsubscribed Firm Capacity

Proposal

61. Section 43.3 lists the procedure for bidding for unsubscribed firm capacity, this language sets forth the bidding period, and requires that: (1) parties must meet DTI's creditworthiness standards; (2) bids must be submitted by facsimile; (3) bids must state the reservation charge or other form of revenue that will be guaranteed over the term of the service agreement, and; (3) bids for capacity are legally binding. Section 43.4 establishes DTI's bid evaluation criteria and method for awarding capacity, including an option to establish a reserve rate.

Comments

62. The Dominion LDCs contend that the Commission should require DTI to define "guaranteed revenue" in sections 43.3 and 43.4 of its tariff by stating the specific types of revenue that are included, specifically excluding, however, incremental revenue from "other services" from that definition, consistent with *Northern Natural*.²⁸ The Dominion LDCs state that DTI has clarified that the maximum bid that a recourse shipper would have to match would be the maximum reservation rate available to the recourse shipper and that this qualification cured one of the objections that the Dominion LDCs held. However, the Dominion LDCs assert that, although DTI has responded that the Commission has approved several types of guaranteed revenues including advance payments, minimum throughput requirements and incremental revenue from other

²⁸ Dominion LDC's Initial Comments at 10, *citing, Northern Natural Gas Co.*, 84 FERC ¶ 61,154 (1998) (*Northern Natural*).

services,²⁹ DTI should be required to state the specific types of guaranteed revenues that it intends to include in its consideration.

Reply Comments

63. DTI argues that, as proposed, sections 43.3 and 43.4 permit bidders to bid other forms of revenue that will be guaranteed over the term of the service agreements and that this section is consistent with other FERC-approved pipeline tariffs.³⁰ DTI contends that it is unnecessary for a pipeline to list in its tariff the specific types of acceptable “guaranteed revenue,” and to do so would unnecessarily restrict bidders.

Commission Ruling

64. The Commission finds DTI’s proposed tariff language is reasonable and denies Dominion LDC’s request to require DTI to specifically define types of guaranteed revenue in its tariff. In *Northern Natural*, the Commission only directed Northern “to revise its tariff to clarify that the guaranteed throughput volume services applies only in the case of a negotiated rate.”³¹ The Commission did not direct Northern to define “guaranteed revenue” as asserted by Dominion LDCs. The Commission finds that “guaranteed revenue” in this instance may be defined as a source of fixed payments resulting from the service at issue. DTI’s proposed language provides flexibility to the bidders in regard to the type of guaranteed payment that they could provide DTI to secure service. Such flexibility should be encouraged. Therefore we will not require DTI to further define guaranteed revenue in its tariff as requested by Dominion LDCs, and accordingly, the Commission accepts DTI’s proposed tariff language.

3. Section 43.4.B - Bid Evaluation Criteria

Proposal

65. Section 43.4.B establishes DTI’s bid evaluation criteria, providing a method for awarding capacity, including the treatment of contingent bids. Section 43.4.B further

²⁹ Dominion LDCs Initial Comments at 10.

³⁰ DTI’s Reply Comments at 17, *citing*, *Tennessee Gas Pipe Line Co.*, FERC Gas Tariff, Fifth Revised Volume No. 1, Sheet No. 405A.02 (section 5.2 Net Present Value Standard. *See also*, *Trailblazer Pipeline Co.*, FERC Gas Tariff, Third Revised Volume No.1, Original Sheet No. 100 G (section 6.1(c)(2) Only Guaranteed Revenue Considered).

³¹ *Northern Natural* at 61,839.

provides that DTI will post on its EBB the factors it will consider in evaluating a bid and the methodology for applying or weighing those factors at the time it posts the notice of available capacity.

Comments and Reply Comments

66. PGC requests that the Commission require DTI at section 43.4.B to provide, along with the factors and methodology that it will use in evaluating a bid for capacity, which DTI will post on its EBB, the weight that it will give to such factors.

67. DTI in its Reply Comments contends that it has complied with PGC's request by revising proposed section 43.4.B to provide as follows:

Notice of any such factors to be considered, and the methodology for applying *or weighing those factors*, shall be posted on the EBB at the time pipeline posts the notice of available capacity under this section 43.5.
(emphasis added)

Commission Ruling

68. DTI's proposed tariff language as modified above addresses PGC's concerns, in that it requires DTI to post on its EBB, the weight that it will give each factor in evaluating the bid. Therefore, DTI's proposed tariff language for section 43.4.B, as modified in DTI's Reply Comments is found to be reasonable and is accepted.

4. Section 43.4.C(6) - Approved Bidder List

Proposal

69. Section 43.4.C(6) states that DTI may reject a bid if the bidder is not on DTI's approved bidder list. The approved bidder list is a list of shippers that have met DTI's creditworthiness standards pursuant to section 43.3B.

Comments

70. Con Edison objects to section 43.4.C(6), contending it should be mandatory, not discretionary, for DTI to reject any bidder not on the approved bidder list.

Reply Comments

71. DTI contends that while an interested bidder may not be on the approved bidder list at the time of bidding, DTI should have the reasonable discretion, to permit the bid, provided that the shipper posts the collateral required under the GT&C section 7 creditworthiness provisions. DTI explains that in cases where a prospective bidder is posting the required collateral, it may not have been formally placed on DTI's "approved bidder list." DTI avers that it should not be required to automatically foreclose a prospective bidder's opportunity to submit a qualifying bid provided the shipper meets the creditworthiness requirements by posting collateral.

Commission Ruling

72. The Commission will accept DTI's proposed language as it provides an adequate amount of discretion that pipelines need when reviewing bids to determine whether or not the bidder meets its creditworthiness requirements. Imposing rigid restrictions such as requiring that a bidder be previously placed upon an approved list or be automatically rejected results in an overly restrictive procedure. DTI's proposed tariff language works in conjunction with its existing creditworthiness standards, permitting a bidder to post collateral in order to receive service. Meeting DTI's creditworthiness requirement by posting collateral adequately protects both DTI and its shippers from the possible default on a contract. Since both DTI and its shippers are adequately protected, the Commission will accept DTI's proposed tariff language on the approved bidder list in section 43.4.C(6) and rejects Con Edison's protest on this issue.

5. Shippers converting from Part 157 to Part 284

Proposal

73. DTI proposes in section 11A.1.G to set forth the procedures by which a shipper may convert from individually-certificated Part 157 service to open-access Part 284 service. Section 11A.1.G further provides that upon the effective date of the conversion, the rights and obligations to service under the Part 157 service agreement shall cease and be abandoned and future rights and obligations to service shall be governed by a service agreement under DTI's applicable Part 284 rate schedule(s). Unless otherwise agreed to by DTI, the rate to be paid by the converting customer will be as follows: (1) customers paying a rate for service under Part 157 less than or equal to DTI's maximum rates under Part 284 will pay DTI's maximum applicable Part 284 rates, including all applicable fuel provisions and surcharges and (2) customers paying rates for service under Part 157 greater than DTI's maximum Part 284 rate or pursuant to terms of service different from DTI's existing Part 284 Rate Schedules, may convert to Part 284 service only upon DTI's

receipt of all necessary Commission authorization to establish a new Part 284 rate schedule or to change an existing Part 284 rate schedule(s), reflecting the equivalent incremental rate and fuel provisions, all surcharges applicable to DTI's Part 284 services, and the appropriate terms and conditions of service, if applicable.

Comments

74. AGLC/VNG object to DTI's proposal that customer's that convert from Part 157 service to Part 284 service will have their ROFR eligibility determined by the terms of the Part 284 service agreement. AGLC/VNG contend that the Commission should require DTI to revise its tariff and require, for purposes of determining ROFR eligibility, that when a shipper converts a Part 157 service to Part 284 service, the term of the Part 284 service must be calculated from the commencement date of the Part 157 service. AGLC/VNG argues that when a shipper converts from Part 157 to Part 284 service the conversion is simply a continuation of the shipper's service under new terms and conditions and is not the initiation of a new service. AGLC/VNG further contend that if the Commission were to approve DTI's proposed tariff revisions, then a shipper converting its Part 157 to Part 284 service in the last year of its contract would find itself subject to DTI's market power without the Commission protections required by Natural Gas Act (NGA) section 7(b) for shippers with long-term, maximum rate agreements. According to AGLC/VNG, such a result would violate the NGA, court precedent and Commission policy.

75. New Jersey Natural contends that DTI should clarify that customers converting to Part 284 contracts will be eligible for ROFR rights regardless of the remaining term of the contract upon conversion. New Jersey Natural argues that as currently drafted long-term transportation customers that convert from Part 157 to Part 284 service with less than one year remaining on their long-term Part 157 contracts would lose ROFR protection. New Jersey Natural contends that such a result deters conversion from Part 157 service to Part 284 service and inhibits the Commission's goals of open access transportation service with protection for captive customers. New Jersey Natural requests that the Commission require DTI to revise section 11.1.G such that ROFR rights will attach to otherwise eligible (*i.e.*, maximum rate) firm service agreements that are the result of conversions to Part 284 service, regardless of the length of term left on the new, converted service contract.

Reply Comments

76. DTI contends that its proposed tariff provision is not inconsistent with the NGA or Commission policy, and that it is entirely reasonable. DTI argues that section 11.A.1.G of its tariff comports with the goals of Order No. 636 by allowing customers to convert

from individually certificated transportation under Part 157 to open access transportation under Part 284 and by protecting those customers that choose to convert with the ROFR rights provided in section 284.221 of the Commission's regulations.

77. DTI points out that the proposed section 11.A.1.G tariff provision is consistent with Section 284.221(e) of the Commission's regulations and does not compel customers to convert to Part 284 service or prevent them from doing so.³² Further, DTI states that the Commission's regulations, policy and precedent establish that conversion is voluntary on the part of the capacity holder and that Part 157 services cannot be converted without the shipper's consent, nor can a third party force a conversion to Part 284. DTI contends that while AGLC/VNG and New Jersey Natural complain that a local distribution company (LDC), as a regulated entity, may not be able to make its own decisions about conversion, LDCs are responsible for their own business decisions whether or not they are influenced or even directed by regulatory decisions.

Commission Ruling

78. In the instant proceeding, the pipeline is proposing general tariff modifications to implement procedures by which a shipper may convert from individually-certificated Part 157 service to open-access Part 284 service. In general, the Commission's policy is to encourage the conversion from Part 157 individually certificated transportation service to Part 284 Blanket Transportation service.³³ DTI's proposal is consistent with section 157.217 of the Commission's regulations which expressly permit the certificate holder to permit its existing shippers to change from a Part 157 individually certificated transportation service, subject to certain conditions, and to abandon the Part 157 service.³⁴

79. AGLC/VNG argues that when a shipper converts from Part 157 to Part 284 service the conversion is simply a continuation of the shipper's service under new terms and conditions and is not the initiation of a new service. Therefore, for purposes of deciding whether the Part 284 service is a long-term service eligible for the ROFR, the converted Part 284 service should be considered to have an initiation date based upon the date service started under Part 157. New Jersey Natural contends that DTI should be

³² DTI Reply Comments at 23, *citing*, 18 C.F.R. § 284.21(e) (2004).

³³ *Pipeline Service Obligations, and Revisions to Regulations Governing Self-Implementing Transportation under Part 284 of the Commission's Regulations*, Order No. 636-B, 61 FERC ¶ 61,272 at 61,994, 57 Fed. Reg. 57,911, 57,916 (1992), *aff'd in part and remanded in part sub nom. UDC v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996).

³⁴ 18 C.F.R. § 157.217 (2004).

required to clarify that customers converting to Part 284 contracts will be eligible for ROFR rights regardless of the remaining term of the contract upon conversion.

80. The Commission finds that, pursuant to such a conversion, the shipper would receive a new service (*i.e.* Part 284 service), rather than a continuation of the old Part 157 service under new terms. That the service now to be provided under Part 284 is a new service is clear because the regulations permit the Part 157 service to be abandoned and because the regulations also grant the pipeline a limited waiver of its tariff requiring posting of available capacity to accommodate the new service.³⁵ Moreover, the converting shipper must execute a service agreement. Accordingly, the conversion does trigger the initiation of a new service. Therefore, the new Part 284 service should be considered to commence on the date of the conversion for purpose of computing its term, even in the circumstance where the conversion occurs in the last year of the Part 157 service.

81. However, this ruling will not deny the converting shipper an opportunity to obtain a ROFR for its Part 284 service. In the conversion process, shippers that convert to Part 284 service with less than one year remaining on their Part 157 agreements may agree to take the new service for a period of one year or more. Section 157.217(a)(3) of the Commission's regulations provide that, for the purpose of such a conversion, the pipeline is granted a waiver of its tariff requiring the posting of available capacity. Thus, where the Part 157 shipper's contract has less than one year remaining, DTI may permit that shipper to enter into a new Part 284 contract for a year or more without posting the capacity to permit others an opportunity to obtain it. Consistent with the Commission's policy favoring conversion, it would be unreasonable for DTI to deny the converting Part 157 shipper's request for a Part 284 service contract of one year or more when the converting shipper is willing to pay the higher of its existing rate or the maximum applicable rate for the relevant Part 284 services. Therefore, converting shippers are not precluded from receiving ROFR protection even if they convert in the last year of their Part 157 contract, if they are also willing to extend the terms of the new Part 284 agreement so that they might qualify for ROFR protection. Accordingly, the Commission will accept DTI's proposal.

6. Miscellaneous Tariff Changes - Section 11A and Rate Schedules

Comments

82. Con Edison raised four issues concerning DTI's miscellaneous tariff changes. First, Con Edison points out that in several instances the phrase "service agreement" is

³⁵ 18 C.F.R. § 157(a)(3) (2004).

used while in other instances the phrase is “Service Agreement.” Therefore, Con Edison requests that for consistency, “Service Agreement” be used throughout the tariff. Second, Con Edison indicates that the second line in section 11A of the GT&C was eliminated and believes that this elimination was in error. Con Edison contends that since GT&C section 11A.2 contemplates “contracting for service,” it appears appropriate for inclusion in the FT Rate Schedule, section 1.1(A). Third, Con Edison argues that since section 1.1(B) in FT Rate Schedule, refers to a Service Agreement “that conforms to the form of Service Agreement contained in this Tariff,” and the Commission may authorize DTI to execute a service agreement containing material deviations from the form of Service Agreement, Con Edison believes that the quoted language should be changed to “that conforms to the form of Service Agreement contained in Tariff or otherwise has been approved by the Commission.” Con Edison also alleges that this change should also be made in the FT Rate Schedule, section 2, GSS Rate Schedule section 1.1.B, and GT&C section 11A.2. Fourth, Con Edison points out that, as recognized in GT&C section 11A.1.A, GT&C section 37 contains an exception to the general rule that DTI is under no obligation to construct facilities to perform open access transportation. Con Edison, therefore, requests that the phrase, “except as provided in GT&C section 37” be added to the end of FT Rate Schedule section 1.2 and to the end of GSS Rate Schedule section 1.2.

Commission Ruling

83. DTI states in its reply comments that it is willing to adopt Con Edison’s recommended corrections and changes. Accordingly, the Commission directs DTI to revise its tariff sheets to adopt Con Edison’s recommended modifications.

7. Sections 11A.1.A and 11A.1.B - New Services

Proposal

84. Section 11A.1.A proposes that “all potential customers requesting to contract for new transportation or storage service under any applicable interruptible rate schedule contained in this Tariff, or to increase MDDO, or to add a new primary point of Receipt or Delivery under an existing firm Service Agreement or increase such an entitlement at any such point, must make a valid request for such service pursuant to the terms of this section 11A, provided, however, that any capacity or entitlements made available through a posting pursuant to GT&C sections 23, 24, or 43 shall be awarded only under the terms of that posting.” DTI has also modified Section 11A.1.B to remove the words “[a]dding a new Primary Point of Receipt or Delivery under an existing firm Service Agreement or increasing an entitlement at any other point” from its definition of a New Transportation or Storage Service.

Comments

85. The MND Group in its protest to the October 29, 2004 filing objected to DTI's proposed revisions to Section 11A.1.B, in which DTI proposed to include as "new" service a shipper's request for an increase in Customer's MDDO or to add a "a new Primary Point of Receipt or Delivery under an existing firm Service Agreement or increasing an entitlement at any such point." MND Group asserts that while DTI's February 9 and 10 filings removed the referenced language from section 11A.1.B, DTI inserted the very language that the MND Group objected into section 11A.1.A. The MND Group objects to DTI's proposed modification of section 11A.1.A as it still appears to require a customer to make a request for "new" service in order for that customer to increase its maximum daily delivery obligations (MDDO) or to change primary receipt or delivery points under an existing contract.

Reply Comments

86. DTI explains that under its revised position, requests for MDDO or primary point changes are still requests for "new service" comparable to requests for interruptible service and that such a position is consistent with its historical practice of allocating all capacity before the advent of capacity posting. DTI explains that requests for service involving an MDDO or primary point change would still require the information specified in section 11A and would be evaluated by DTI in the specified manner. DTI further explains that to the extent that capacity encompassing MDDO capability or particularly primary points is included in a capacity posting, the capacity will only be awarded pursuant to that posting and cannot be short-circuited through a separate request for service. DTI contends that this is a reasonable approach and should be approved by the Commission.

87. In its reply comments, the MND Group argues that DTI's proposed modification to section 11A.1.A does not remedy the MND Group's concerns and should be further modified. MND Group is concerned that DTI's modification utilizes language in section 11A which may be interpreted to require a customer with an existing contract to subject its contract to the rules required for a request for "new" service, even when the existing shipper merely seeks to make a change in its existing contract to increase MDDO or change a primary point. The MND Group contends that the proposed tariff language needs to be clarified to remove the potential of such an interpretation to be advanced.

Commission Ruling

88. The Commission finds that DTI's proposed tariff language is unclear. On the one hand DTI's proposal appears to state at section 11.A.1.A that requests for increases in entitlement or MDDO or change in primary delivery or receipt point DTI are to be considered as requests for new service, subject to the bidding requirements of sections 23, 24, and 43. However, DTI has also modified its tariff to delete requests for MDDO increases or point changes from its definition of new services at section 11.A.1.B. DTI's explanation that it considers requests for MDDO or point changes as a request for new service comparable to requests for interruptible service is somewhat unclear as well, because requests for IT service are clearly referred to in section 11.A.1.B as requests for new service, while DTI removed language defining requests for MDDO or point changes as requests for new services.

89. Therefore, DTI is directed to file revised tariff sheets specifying whether an increase in entitlement or MDDO or change in primary delivery or receipt point is a request for a new service. DTI is also required to clarify to what extent such a request, regardless of whether it is treated as a request for a new service, is to be subject to the bidding requirements of section 23, 24, and 43 of DTI's tariff.

The Commission orders:

DTI is directed to file within thirty (30) days of the issuance of this order revised tariff sheets containing the language in the *pro forma* tariff sheets listed in Appendix B as modified by the discussion in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.

Docket No. RP05-51-000

Appendix A

List of Initial and Reply Commenters

Dominion Transmission, Inc.

Initial Commenters

City of Richmond, Virginia (Richmond)
Columbia Gas of Ohio, Inc., Columbia Gas of Pennsylvania, Inc., Columbia Gas of Virginia, Inc., and Bay State Gas Company (collectively NiSource)
Consolidated Edison Company of New York, Inc. (Con Edison)
National Fuel Gas Distribution Corporation, New York State Electric & Gas Corporation, New State Electric & Gas Corporation, Rochester Gas and Electric Corporation, Niagara Mohawk Power Corporation, A National Grid Company (collectively MND Group)
The East Ohio Gas Company, d/b/a Dominion East Ohio, The Peoples Natural Gas Company, d/b/a Dominion Peoples, and Hope Gas, Inc., d/b/a Dominion Hope (collectively Dominion LDCs)
Dominion Transmission, Inc. (DTI)
New Jersey Natural Gas Company (New Jersey Natural)
Process Gas Consumers Group (PGC)
Public Service Commission of the State of New York (PSCNY)
Statoil Natural Gas LLC (Statoil)
Virginia Natural Gas, Inc. and Atlanta Gas Light Company (ALGC/VNG)

Reply Commenters:

City of Richmond, Virginia (Richmond)
National Fuel Gas Distribution Corporation, New York State Electric & Gas Corporation, New State Electric & Gas Corporation, Rochester Gas and Electric Corporation, Niagara Mohawk Power Corporation, A National Grid Company (collectively MND Group)
The East Ohio Gas Company, d/b/a Dominion East Ohio, The Peoples Natural Gas Company, d/b/a Dominion Peoples, and Hope Gas, Inc., d/b/a Dominion Hope (collectively Dominion LDCs)
Dominion Transmission, Inc. (DTI)
New Jersey Natural Gas Company (New Jersey Natural)

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Appendix B

List of Pro Forma Tariff Sheets

Dominion Transmission, Inc.

Pro Forma Tariff Sheets to FERC Gas Tariff, Third Revised Volume No. 1

Pro Forma Sheet No. 150
Pro Forma Sheet No. 204
Pro Forma Sheet No. 300
Pro Forma Sheet No. 1001
Pro Forma Sheet No. 1045
Pro Forma Sheet No. 1046
Pro Forma Sheet No. 1047
Pro Forma Sheet No. 1048
Pro Forma Sheet No. 1049
Pro Forma Sheet No. 1050
Pro Forma Sheet No. 1051
Pro Forma Sheet No. 1158
Pro Forma Sheet No. 1159
Pro Forma Sheet No. 1160
Pro Forma Sheet No. 1161
Pro Forma Sheet No. 1505
Pro Forma Sheet No. 1506
Pro Forma Sheet No. 1507
Pro Forma Sheet No. 1508
Pro Forma Sheet No. 1509
Pro Forma Sheet Nos. 1510 – 1999
Pro Forma Revised Sheet No. 2005
Pro Forma Sheet No. 2055